

2013 Energy Legislation Review

The following is a list of energy legislation presented during the 2013 session and tracked by EPDD. Links to bills and veto messages are included.

[HB 37](#) Short Title: Allow temporary leasing of water rights

Status: Signed into Law

Drafted by DNRC staff, this bill allows a change of use of a water right through a temporary lease. The bill is generally thought to address water issues related to oil development. Requires that the right must have been used with in the previous 5 years, may only be leased during the existing period of diversion, may not be leased for more than 2 years during any consecutive 10-year period, limits leases to 180 acre-feet per year, and may not change the point of diversion. Also requires that the applicant prove that water rights of other appropriators will not be adversely affected by the lease.

[HB 45](#) Short Title: Require EQC eminent domain handbook be included in condemnation complaint

Status: Signed into Law

Adds an additional requirement that a copy of the current edition of the environmental quality council's publication, "Eminent Domain in Montana" be provided to all landowners as a part of the complaint for condemnation.

[HB 188](#) Short Title: Revise qualifying small power production facility laws

Status: [Vetoed by Governor](#)

Revised qualifying small power production facilities (QFs) laws by lowering the approved rate schedule process at the Public Service Commission to projects 3 MW or less with a maximum of 6 MW per year. If more than 15% of a utilities load is from QFs, the limit becomes 100kW per project. Required a competitive solicitation for QF projects that do not qualify for a rate schedule—current law allows for a competitive solicitation or a good faith negotiation. The issues dealt with in this legislation are being considered by the PSC who recently reinstituted a 50 MW cap on QF-1 projects (currently about 36 MW online); the PSC has [proposed a rule](#) that would set the avoided cost rate schedule on projects 100kW and smaller.

[HB 218](#) Short Title: Require Board of Oil and Gas to administer grant program for oil and gas impacts

Status: [Vetoed by Governor](#)

Created an "oil and gas impact account" managed by the Board of Oil and Gas Conservation—later amended to the Department of Commerce—"to assist local government units that have been required to maintain and expand local government infrastructure as a consequence of oil and gas development." Funding for the grant was generated by diverting 25% of annual revenues received from federal mineral leases from 2014 through 2020; if this amount is less than \$10 million, the difference would come from the general fund. In addition, \$15 million was appropriated to Commerce in 2013 to establish the program. The Governor cited budgetary structural imbalance as main reason for veto and noted that his administration directed funding from other programs to aid communities in eastern Montana impacted by energy development.

[HB 256](#) Short Title: Revise landowner notification requirements under MFSA

Status: Signed into Law

Revises landowner notification requirements under the Major Facilities Siting Act to include all landowners within a 1-mile-wide facility siting corridor identified as the preferred alternative in the draft environmental review for the project. If a different corridor is later identified, notice and an opportunity for comment must be provided to landowners within the new corridor prior to issuance of a certificate.

[HB 394](#) Short Title: Allow for aggregate net metering

Status: Failed in FRET

Original language allowed any public utility customers to share in the output of a common net metered system no larger than 250 kW; subscribers/investors would receive a credit on their bill according to their proportional share in the system. Later amended to only include those living in the same multi-unit facility and reduced the size to 50 kW.

[HB 408](#) Short Title: Revise tax rate laws on mandated pollution control equipment

Status: Vetoed by Governor

Reduced tax rate on air and water pollution control equipment over a 4-year period from 3% to 1% and provided backfill for county and local governments. Governor cited impact to general fund (\$6.5 million in 2018 and growing) as reason for veto.

[HB 413](#) Short Title: Referendum on eminent domain laws

Status: Died in first committee

Revised eminent domain laws to define “just compensation” and “lost profits” and required that condemnation causes the least amount of damage to private property for the greatest public good and is the most limited interest in real property necessary for the project.

[HB 417](#) Short Title: Revise eminent domain laws related to due process

Status: Signed into Law

Revises eminent domain laws to require a final written offer be rejected prior to condemnation and allows additional offers after final complaint in eminent domain proceedings.

[HB 429](#) Short Title: Revise the energy conservation and alternative energy tax credits

Status: Failed 2nd Reading in House

Increased the energy conservation and alternative energy tax credits from a maximum of \$500 to \$1000, allowed a 3 year carry forward, limited renewable energy credit to a maximum of 25% of system cost. Sunset date of December 31, 2015.

[HB 475](#) Short Title: Generally revise energy laws related to preapproval of a resource

Status: Failed in FRET

Addressed competitive solicitation process for qualifying facilities to improve the transparency and robustness of the process. Established a process for the PSC to review utility solicitations, allows public comment on the proposed RFP, established an independent monitor to oversee the process and provided for a waiver process. Based on suggestions from the National Association of Regulatory Utility Commissioners and modeled on Utah legislation.

[HB 532](#) Short Title: Revise income tax using a flat tax rate and a tie to federal taxable income

Status: Failed in House Taxation

Tax code simplification bill that removed all energy tax credits.

[HB 581](#) Short Title: Revise income tax using a tie to federal taxable income and repealing credits

Status: Tabled in Senate Taxation

Revised income tax statutes and eliminated a number of tax deductions and credits. Energy related tax credits and deductions eliminated include: energy conservation alternative fuel motor vehicle conversion, geothermal systems, alternative energy systems, oilseed crushing facility, and biodiesel production.

[HJ 9](#) Short Title: Joint resolution supporting coal

Status: Signed into Law

Resolution declaring the 63rd Legislature is in support of the “continued use and development of coal-based power in the United States and supports the expansion of additional shipping capacity through new and existing ports in order to allow for the sale of Montana resources to emerging markets.”

[HJ 11](#) Short Title: Legislative resolution on energy

Status: Signed into Law

Resolution that encourages that the recommendations in former Department of Energy Secretary Steven Chu’s memo to federal Power Marketing Administrations be narrower in scope, contain greater recognition of the work already completed by the Western Area Power Administration, ensure change is incremental, and provide economic protections to Montana preference customers. Also requests that DOE better communicate actions with the Montana Legislature in the future.

[SB 26](#) Short Title: Clarifying renewable portfolio standard provisions

Status: Died in Process

Clarified language under the *Montana Renewable Power Production and Rural Economic Development Act* (commonly known as the RPS) regarding definitions, reporting requirements and deadlines. Did not make any significant changes to RPS and described as a “clean up bill” to clarify existing legislative intent.

[SB 31](#) Short Title: Revise definition of eligible renewable resource

Status: [Vetoed by Governor](#)

Originally allowed all existing dams (other than federally owned) to qualify as an eligible resource under the RPS. Later amended so the definition of “eligible renewable resource” under the RPS would include all hydroelectric facilities, regardless of size, commencing commercial operation after January 1, 2013. Governor’s veto mentioned study resolution (HJ 6) and careful crafting of language in existing code as reasons for veto.

[SB 45](#) Short Title: Revise the renewable portfolio standard laws to include hydro expansions

Status: Signed into Law

Revises the definition of “eligible renewable resource” under the RPS to include expansions at existing hydroelectric facilities. Provides guidance on calculating eligible output as the proportion of total generation based on the ratio of added capacity to total capacity and provides a retroactive date going back to December 31, 2010. Retroactive date was amended by Governor and approved by the legislature. Governor’s amendments also require the PSC to determine average incremental generation based on engineering reports

[SB 52](#) Short Title: Clarify renewable energy credit reporting requirements

Status: Signed into Law

Clarifies reporting requirements on the purchase and sale of renewable energy credits (RECs) to include public utilities, competitive electricity providers, cooperative utilities, and owners of renewable electrical generation facilities for the purposes of complying with Montana's RPS. Passed unanimously.

[SB 92](#) Short Title: Revise strip and underground mining laws

Status: Signed into Law

Clarifies reporting requirements for coal prospecting permit and streamlines annual reporting requirements. Requires an inventory of plant "species" rather than "varieties" existing in the affected area, that the application be certified by a professional engineer or land surveyor, and ensures water supplies are protected from both surface and underground coal mining. Also clarifies notification requirements. Widely supported as a bill that clarified existing intent.

[SB 106](#) Short Title: Revise definition of eligible renewable resource

Status: Signed into Law

Revises the definition of "eligible renewable resource" under the RPS to include the renewable energy fraction derived from storage technologies including flywheels, pumped hydroelectric facilities, batteries, and compressed air.

[SB 125](#) Short Title: Revising penalties for failure to meet renewable energy requirements

Status: [Vetoed by Governor](#)

Originally removed the penalty for failure to comply with the Community Renewable provision of the RPS. After multiple amendments, the final version revised the penalty for failure to meet the CREP requirement was set "not to exceed \$1,000" for each MW of nameplate capacity not met. The bill also clarified an ambiguity in existing law regarding the penalty for not meeting the community renewable energy project provision under the RPS. The Governor proposed an amendment to change the penalty to \$10,000 per MW but the amendment failed to garner the necessary votes and was finally outright vetoed by the Governor.

[SB 138](#) Short Title: Extend class 14 tax classification to all new generating and fuel facilities

Status: [Vetoed by Governor](#)

Provided class 14 tax classification (3% tax rate) to all electrical generation and transmission facilities, liquid or gaseous fuel production facilities, and storage facilities constructed after June 30, 2013. Current taxation rates vary from 6% to 12% depending on the type of property and only renewable energy generation and transmission facilities qualify for the reduced rate. Governor stated that the playing field was already fairly level and current taxation levels have been carefully crafted to support an "all of the above" energy development portfolio.

[SB 141](#) Short Title: Revise definitions for certain common carrier pipelines

Status: Signed into Law

Clarifies language in existing code that pipelines carrying carbon dioxide "from a plant of facility that produces or captures carbon dioxide" qualify as common carrier pipelines; previous language was "carbon dioxide produced in the combustion or gasification of fossil fuels."

[SB 164](#) Short Title: Exempt small utilities from RPS requirements

Status: Signed into Law

Exempts public utilities that served fewer than 50 customers on December 31, 2012 from requirements under the RPS. Public utilities exempted include Avista with 25 customers and Black Hills Power and

Light with 38 customers. Passed by wide margins as small public utilities were not seen as the focus of RPS requirements.

[SB 180](#) Short Title: Revise eminent domain laws

Status: Died in FRET Committee

Originally repealed the right of a public utility to exercise eminent domain but later amended to repeal only the explicit grant of authority to exercise the power of eminent domain upon the issuance of a certificate under the *Major Facilities Siting Act*.

[SB 240](#) Short Title: Revise taxation of pollution control equipment

Status: Vetoed by Governor

Exempted pollution control equipment placed into service after January 1, 2012 from taxation. Passed House and Senate 92-8 and 40-9, respectively. Governor's reason for veto was potential legal concerns of treating similarly situated taxpayers in the same classification differently and fiscal impacts to state and local governments.

[SB 282](#) Short Title: Generally revise taxation of income, including the corporate license tax

Status: Vetoed by Governor

Revised Montana's income tax laws and eliminates most individual income tax deductions including the biodiesel blender, alternative fuel vehicle conversion, biodiesel production oilseed crushing, energy conservation and alternative energy credits among others. Veto language indicated the benefits of tax credits in creating jobs and incentivizing development.

[SB 295](#) Short Title: Eliminate oil & gas "tax holiday" and provide money for impacts and renewables

Status: Died in Senate Taxation Committee

Eliminated the oil & gas "tax holiday" and uses additional revenues for water conservation and development impacts. Currently, horizontal wells are taxed at 0.76% for the first 18 months of production and 9.26% thereafter. This bill would tax production at 9.26% starting with the first barrel of oil produced.

[SB 325](#) Short Title: Revise renewable portfolio standard laws

Status: Signed into Law

Allows wood treated with creosote, pentachlorophenol or copper-chroma-arsenic to be utilized as an eligible resource under the RPS if the total nameplate capacity of the facility is less than 5 MW.

[SB 327](#) Short Title: Generally revise renewable portfolio standard

Status: Signed into Law

Exempts competitive electricity suppliers with fewer than 4 customers from the RPS and defines a customer as "an entity that purchases electricity for commercial or industrial use and does not resell electricity to others."

[SJ 6](#) Short Title: Interim study of the impacts of Montana's renewable portfolio standard

Status: Signed into Law

Resolution that calls for the creation of an interim committee to review the economic impacts, environmental benefits, and impacts on Montana consumers of the RPS. Specifically, the committee will look at the RPS' economic impacts on the contribution to new electrical generation, job creation, creation of new industries, use of RECs, development of new transmission. Environmental benefits reviewed include the standards contribution to diversified generation in Montana and reduction of fossil

fuel dependence, types of generation used to meet the standard, and impacts on air quality. Topics reviewed for Montana ratepayers include: impacts on costs, the standards utility as a hedge against volatility in fossil fuel prices, and the standards impact on other efforts to help consumers.

[SR 2](#) Short Title: Resolution related to the U.S. Department of Energy

Status: Signed into Law

Resolution that encourages that the recommendations in former Department of Energy Secretary Steven Chu's memo to federal Power Marketing Administrations be narrower in scope, contain greater recognition of the work already completed by the Western Area Power Administration, ensure change is incremental, and provide economic protections to Montana preference customers. Also requests that DOE better communicate actions with the Montana Legislature in the future. Companion bill to HJ 11.

